



Office of the Attorney General  
State of Texas

April 26, 1994

DAN MORALES  
ATTORNEY GENERAL

Mr. Edwin M. Snyder  
First Assistant City Attorney  
City of Plano  
P.O. Box 860358  
Plano, Texas 75086-0358

OR94-182

Dear Mr. Snyder:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. The Plano Housing Authority (the "authority") received a request for the "supporting documentation" referenced in a letter from the authority to the United States Department of Housing and Urban Development. You contend that this information is excepted from disclosure under the Open Records Act. Your request was assigned ID# 24681.

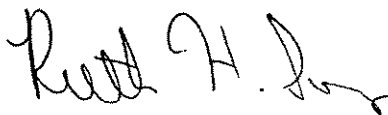
You assert that these documents are excepted by section 552.103 as information that relates to pending or reasonably anticipated litigation. You have provided information that indicates the authority reasonably anticipates litigation, and the documents you seek to except are directly related to the anticipated litigation. Open Records Decision Nos. 551 (1990) at 3-6; 518 (1989) at 5; 328 (1982) at 1 ("mere chance of litigation is not sufficient"). You may therefore withhold these documents under section 552.103.

When parties to litigation have inspected records pursuant to court order or discovery or the litigation has ended, section 552.103 may no longer be invoked to withhold the documents from release. Open Records Decision No. 349 (1982) at 2 (once information is obtained by other party, purpose of exception is served and exception is no longer applicable). However, certain information you sent for our review is excepted from disclosure even when section 552.103 is no longer applicable, because the information is made confidential by other law. Information in an Employee's Withholding Allowance Certificate, Form W-4 of the Internal Revenue Form, is protected from release by federal law and must be withheld from disclosure. 26 U.S.C. § 6103(b)(2)(A); Open Records Decision No. 600 (1992) at 8-9; Gov't Code § 552.352. These records also contain social security numbers, which may also be confidential. *See* Open Records Decision No. 622 (1994) at 1-4; Gov't Code §§ 552.101, .352. Some of the documents also disclose home addresses of public employees and may be protected under section 552.117 if the employees opted to withhold such information in accordance with section 552.024.

You also contend that the information was excepted from disclosure by section 552.101 because if various allegations are not true it could place certain employees in a false light. In Open Records Decision No. 579 (1990) at 7, this office stated that the purpose of the Open Records Act "is best served by the disclosure of even doubtful information, even if embarrassing, if it relates to the conduct of the public's affairs." See *Id.* at 3-8 (section 552.101 does not incorporate the tort of false light privacy, overruling prior decisions to the contrary). Section 552.101 protects information that would be highly intimate or embarrassing to a reasonable person, when the information is also of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 682 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ *ref'd n.r.e.*); Open Records Decision No. 328 (1982) at 2-3. The documents at issue are of legitimate public concern, as they involve the use of public funds and the work of public employees. Open Records Decision No. 470 (1987) at 4 (legitimate public interest in job performance of public employee).<sup>1</sup>

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/rho

Ref.: ID# 24681

Enclosures: Submitted documents

cc: Ms. Lori Pugh  
Plano Star-Courier  
801 E. Plano Parkway  
Plano, Texas 75074  
(w/o enclosures)

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<sup>1</sup>You also assert that the information is excepted from disclosure under section 552.108 as information relating to an ongoing investigation or prosecution of criminal conduct. However, since this office has already determined that the information may be withheld under section 552.103, and that some of it is confidential by other law, we do not need to address this argument.